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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,006	10/29/2003	Kuo-Chi Tu	TS02-1033	7106
7590	03/09/2007	EXAMINER		
Daniel R. McClure THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP. 100 Galleria Parkway Suite 1750 Atlanta, GA 30339			MITCHELL, JAMES M	
ART UNIT		PAPER NUMBER		2813
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/09/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/696,006	TU, KUO-CHI	
	Examiner	Art Unit	
	James M. Mitchell	2813	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 December 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 25,27-30 and 39-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 39-46 is/are allowed.
- 6) Claim(s) 25,27,28 and 30 is/are rejected.
- 7) Claim(s) 29 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This office action is in response to applicant's remarks filed December 13, 2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 25, 27, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Broekaart et al. (U.S. 6,939,812).

4. Broekaart (Fig. 1, 3, 4) discloses:

(cl. 25) a planar insulating layer (13) with contact openings (14) on a substrate (1) having device areas comprised of: a conducting layer (7) having an anti-reflective coating (8) on top surface, said planar insulating layer on said patterned conducting layer having said contact openings of varying depths (Fig. 3) to said device areas, some of said contact openings (15) extending down to and above a border of the component and therefore over an edge of said patterned conducting layer (e.g. hole, 14,15,16...also hole, 15, covering portion of vertical edge of conductor, 7) within said opening areas

(15), said patterned conducting layer, wherein at least two¹ of said contact openings extending down to and over an edge of said patterned conducting layer within said opening areas are on opposite sides of open areas (e.g. nothing in space to left and right of via)²;

(cl. 30) and the anti-reflective coating is TiN (Col. 2, Line 50).

5. With respect to the process limitation of claims 25, 27 and 28 for example that the conductive layer is "patterned" or "the openings are etched," and a "masking and etching step," the prior art structure is the same as the claimed invention. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

6. With respect to claim 1, the prior art forms the same structure as the claimed invention. Thus the intended use limitation of "to allow for more relaxed alignment tolerance" and "for forming low-resistance contacts..." does not differentiate the claimed invention from a prior art, since it has been held that the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See *Ex parte Masham*, 2 USPQ2d 1647 (1987).

¹ Multiple vias such as 15 are duplicated in photolithographic process (Col. 2, Lines 30-40).

Allowable Subject Matter

7. Claims 39-46 are allowable and claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: while the prior art as shown in Wang et al. (U.S 6,040,619) shows exposing an edge of a conductor covered with an ARC and insulation, it fails to disclose or make obvious why one of ordinary skill in the art would want to expose the edge. Wang teaches exposure as part of an offset via, but since Broekaart already discloses an offset via with its edge covered there would be no motivation to expose the edge with all the limitations of the independent claim. In addition the prior art fails to disclose or make obvious edge of the conductive layer covered with antireflective coating as the top electrode for a capacitor including all the limitations of the independent claim.

Response to Arguments

9. Applicant's arguments with respect to claims 25 and 27-30 have been fully considered but they are not persuasive, and applicant's arguments with respect to claims 39-46 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant contends that the claimed invention is patentable over Broekaart, because its via "fails to expose or each [sic] edge portion of conductor." However,

² e.g. via 40 in applicant's Fig. 5 is the same structure as Broekaart's via 15

examiner is unpersuaded, because the claim does not require that edge portions of its conductor to be exposed or reached. Rather the claim requires an etched via over the edge of the conductor. Because via, 15, is formed above and adjacent the edge of its conductor it is over and is encompassed within the broad plain and ordinary meaning of applicant's claim.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Mitchell whose telephone number is (571) 272-1931. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead Jr. can be reached on (571) 272-1702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


CARL WHITEHEAD, JR.
SUPPLYING PATENT EXAMINER
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Ex. Mitchell, J.D.
March 4/2007